

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

<b>Badlands Cellular of North Dakota Limited Partnership 2007 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-07-587</b>
<b>North Dakota RSA No. 3 Limited Partnership 2007 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-07-588</b>
<b>North Central RSA 2 ND Limited Partnership 2007 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-07-590</b>
<b>North Dakota 5 – Kidder Limited Partnership</b>	<b>Case No. PU-07-591</b>
<b>Northwest Dakota Cellular of North Dakota Limited Partnership</b>	<b>Case No. PU-07-592</b>
<b>Bismarck MSA Limited Partnership</b>	<b>Case No. PU-07-593</b>
<b>ALLTEL Communications, Inc. 2007 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-07-595</b>

**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Peggy Vaagen** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **20<sup>th</sup> day of March, 2008**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing photocopies of:

**Order Granting Trade Secret Protection**

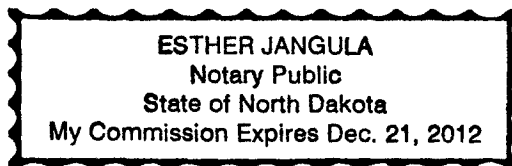
The envelope was addressed as follows:

Mark Ayotte, Attorney  
Briggs and Morgan, P.A.  
2200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402  
**Cert. No. 7007 2560 0001 6050 7374**

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this 20<sup>th</sup> day of March, 2008.

SEAL



*Peggy Thagen*  
\_\_\_\_\_

*Esther Jangula*  
\_\_\_\_\_  
Notary Public

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**Affidavit Certified Mail Order Granting Trade Secret Protection**

Public Service Commission

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Public Service Commission

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Badlands Cellular of North Dakota Limited Partnership**  
**2007 High-Cost Universal Service Support Annual Report** **Case No. PU-07-587**

**North Dakota RSA No. 3 Limited Partnership**  
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**Bismarck MSA Limited Partnership** **Case No. PU-07-593**

**ORDER GRANTING TRADE SECRET PROTECTION**

**March 12, 2008**

On July 30, 2007 Badlands Cellular of North Dakota Limited Partnership, Bismarck MSA Limited Partnership, North Dakota RSA No. 3 Limited Partnership, Northwest Dakota Cellular of North Dakota Limited Partnership, North Dakota 5 — Kidder Limited Partnership, and North Central RSA 2 of North Dakota Limited Partnership (Partnerships) filed applications to protect trade secret and confidential information in conjunction with 2007 ETC Annual Report required by N.D. Admin. Code §§69-09-05-12(4) and 69-09-05-12.1. On August 28, 2007 Commission Staff (Staff) filed a response to the applications. On November 7, 2007 the Commission held an Informal Hearing. On November 26, 2007 Partnerships filed a reply brief. On December 14, 2007 Staff filed an amended response to the applications.

Partnerships seek to protect Confidential Exhibits A-1, A-2, and A-3 to its "USF Report" and Confidential Exhibit C-1 to its "2006 ETC Outage Report."

Confidential Exhibit A-1 is a table identifying specific construction or upgrade projects that Partnerships have undertaken in their designated areas in North Dakota in 2006 in order to expand or improve service.

<b>18</b>	<b>PU-07-592</b>	<b>Filed: 3/12/2008</b>	<b>Pages: 6</b>	<b>18</b>	<b>PU-07-587</b>	<b>Filed: 3/12/2008</b>	<b>Pages: 6</b>
				<b>18</b>	<b>PU-07-588</b>	<b>Filed: 3/12/2008</b>	<b>Pages: 6</b>
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	<b>Motion to Grant Trade Secret Protection</b>			<b>18</b>	<b>PU-07-591</b>	<b>Filed: 3/12/2008</b>	<b>Pages: 6</b>
					<b>Motion to Grant Trade Secret Protection</b>		

Confidential Exhibit A-2 is a statement of Partnerships 2006 network and operating expenses and a projection of their 2008 network and operating expenses.

Confidential Exhibit A-3 is a table identifying specific construction, maintenance, or upgrade projects Partnerships plan to undertake in their designated areas in North Dakota in 2008.

Confidential Exhibit C-1 to the ETC outage report includes specific information for each outage over 30 minutes experienced by Partnerships in their ETC designated service areas in 2006.

Partnerships state that the information that they seek to protect in Confidential Exhibits A-1, A-2 and A-3 — the start and completion dates of each project, the amount of investment in each project, the geographic location of each project, the estimated population served by each project, and Partnerships 2006 and 2008 operating expenses - is information that is not known to Partnerships' competitors. Partnerships state that because Partnerships do not know analogous information about their competitors' plans or expenses, and that this information, if known to competitors, would give the competitors an unfair advantage.

Partnerships state that the information derives independent economic value from not being generally known to other persons, because if known to competitors, the competitors could assess the effectiveness of Partnerships' marketing and strategic business plans and make changes to their own business and marketing plans in response.

Partnerships state in their Reply Brief that the information provided in Confidential Exhibits A-1, A-2 and A-3 is considered confidential by the FCC under its rules. Under 47 C.F.R. § 0.457(d) trade secrets and commercial or financial information obtained from any person and privileged or confidential materials not routinely available for public inspection are treated a confidential by the FCC, and a request for protection is not required. In addition, a request for protection of confidential information may be submitted to the FCC under 47 C.F.R. §0.459. Partnerships state that the FCC has acted to routinely grant protective orders pursuant to FCC Rules 0.457 and 0.459 in order to accord confidential treatment to financial information about cell site expenditures and operating expenses set forth in wireless ETCs' build-out plans filed with the FCC. See *Petition of Singular Wireless, LLC for designation as an Eligible Telecommunications Carrier in the State of Georgia, Protective Order*, CC Docket 96-45, DA 07-3627 (rel. August 15, 2007) ("*Cingular Order*"); *NEP Cellcorp, Inc. Application for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Protective Order*, CC Docket 96-45, DA 07-3628 (rel. August 15, 2007) ("*NEP Order*"); *Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Protective Order*, CC Docket 96-45, DA 07-3629 (rel. August 15, 2007) ("*Corr Order*"). In the *Cingular* docket, the confidential information related to the projected uses of

universal support set forth in the company's 5-year service improvement plan, including capital expenditures, operating expenses and proposed new cell sites. *See Cingular Order*, ¶ 2.

Partnerships state that the information provided in Confidential Exhibit C-1 is considered confidential by the FCC for national security reasons and should be granted trade secret protection under N.D. Admin. Code §69- 02-09-01. Partnerships state that the information required in the Commission's ETC Outage Report is similar to the information which the FCC requires wireless carriers to file in Part 4 Outage Reports as contained in 47 C.F.R. §4.1 et seq., especially §4.9. Partnerships state that the FCC has determined that the information required in Part 4 Outage Reports is highly sensitive and protected from public dissemination under the Freedom from Information Act, and quote the following:

The overwhelming majority of the commenting parties, including the Department of Homeland Security ("DHS"), have demonstrated that the outage reports will contain sensitive data, which requires confidential treatment under the Freedom of Information Act ("FOIA"). This data, though useful for the analysis of past and current outages in order to increase the reliability and security of telecommunications networks in the future, could be used by hostile parties to attack those networks, which are part of our Nation's critical information infrastructure. The disclosure of outage reporting information to the public could present an unacceptable risk of more effective terrorist activity. We therefore will treat the information that will be provided as confidential. This information will be withheld from disclosure to the public in accordance with the Freedom of Information Act.<sup>1</sup>

Partnerships state that keeping Confidential Exhibit C-1 trade secret/confidential for security reasons would be consistent with N.D. Admin. Code §69- 02-09-01 because the information in Confidential Exhibit C-1 meets all the requirements for granting trade secret protection pursuant to that rule. Partnerships state this information is not known to their competitors, and if it were known to them, they would have an unfair advantage. Partnerships state further that this information is not known to parties hostile to the United States who could use it to attack communications networks.

Partnerships state that the information in Confidential Exhibit C-1 derives independent economic value from not being generally known to other persons because competitors could use it to assess strategic and technological decisions the Partnerships have made in developing their network and competitors could make changes to their business and network development plans in response. Partnerships state that the information also derives economic value from not being known to hostile

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<sup>1</sup> *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-188, 19 FCC Rcd. 16830 (rel. Aug. 19, 2004), ¶ 3 ("Outage Order").

parties because the information to attack communications networks would cause harm to Partnerships and North Dakota citizens.

Partnerships state that the information in Confidential Exhibits A-1, A-2, and A-3 is not available to competitors by any other means. Partnerships consider information about capital improvement projects and about network and operating expenses to be highly confidential and competitively sensitive, and that Partnerships accordingly protect the information from public disclosure. Partnerships state that Confidential Exhibits A-1, A-2, and A-3 should be considered confidential pursuant to N.D.C.C. §44-04-18.4 because the information has not been previously disclosed, and it is 1) trade secret information, 2) proprietary information, 3) commercial information, and 4) financial information.

Partnerships state that the information provided under Confidential Exhibit C-1 is not available to other persons by any other means. Partnerships consider information about outages to be highly confidential and competitively sensitive. Partnerships state that they protect the information from disclosure as does the FCC.

Partnerships state that the information in Confidential Exhibit C-1 sought to be protected — location, outage start and end time, description, resolution, services affected, and steps taken to prevent similar situations — is "trade secret information" as defined in N.D.C.C. §44-04-18.4(2)(d) because it derives independent economic value from not being known to Partnerships' competitors, who could obtain economic value from its use, and because it is the subject of rigorous efforts to maintain its secrecy. Partnerships also state that the information in Confidential Exhibit C-1 is proprietary information as defined in N.D.C.C. §44-004-18.4(2)(c)(5) because it consists of technical information that is intended to be submitted as private, and the disclosure of the information to competitors could harm Partnerships' business

Partnerships state that entities that could obtain economic value from the disclosure or use of information in Confidential Exhibits A-1, A-2, and A-3 include wireless competitors such as Alltel and Sprint Nextel, and also landline telephone companies.

Partnerships identify Alltel and Sprint Nextel, and also landline telephone companies that Partnerships have not specifically identified as competitors.

Partnerships state that the efforts that they undertake to protect information in Confidential Exhibits A-1, A-2, and A-3 from public disclosure include adhering to a confidentiality/trade secret policy prohibiting Partnerships' employees from disclosing the information, and ensuring that whenever analogous information is required to be filed with a regulatory body, the filing is made on a confidential basis.

Partnerships state that they consider information contained in Confidential Exhibit C-1 to be highly confidential. The FCC protects such information from public disclosure, and Partnerships do likewise.

N.D.C.C. §47- 25.1-01 defines the term "trade secret" as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition of "trade secret" under N.D.C.C. §44-04-18.4, which is almost identical to N.D.C.C. §47-25.1-01, reads as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, technical know how, or process, that:

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information. (Differences italicized).

N.D. Admin. Code §69-02-09-04 requires that the "commission staff examine the information and application and make a prima facie recommendation of whether the information is relevant and a trade secret under the definition of trade secret in North Dakota Century Code section 47-25.1-01."

Staff recommends that the information is relevant because, under N.D. Admin. Code §69-09-05-12.1(1) and 69-09-05-12.1(2) designated eligible telecommunications carriers must provide the information in Confidential Exhibits A-1, A-2, A-3 and C-1 to the Commission in an annual report to show that the company is in compliance with its obligations as an eligible telecommunications carrier.

Staff recommends that the information in Confidential Exhibits A-1, A-2, A-3 and C-1 is trade secret information that should be protected. The information provided in Confidential Exhibits A-1, A-2 and A-3 is considered confidential by the FCC under 47 C.F.R. §§ 0.457 and 0.459. The FCC also considers information in outage reports to be highly sensitive and protects the information from public dissemination in the Freedom from Information Act. N.D.C.C. §44-04-18(1), as interpreted by the North Dakota Attorney General, allows a state agency to provide confidentiality protection of information if the information is specifically protected under federal regulation. The information in Confidential Exhibits A-1, A-2, A-3 and C-1 is protected under federal regulation.

The Commission agrees that Partnerships' applications requesting trade secret protection for Confidential Exhibits A-1, A-2, and A-3 and C-1 should be granted.

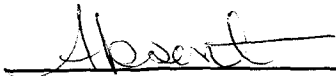
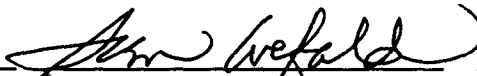

The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

### Order

The Commission Orders:

1. Partnership's applications for trade secret protection are GRANTED.
2. This Order does not constitute precedent for subsequent trade secret decisions by the Commission.

### PUBLIC SERVICE COMMISSION

		
<b>Tony Clark</b> Commissioner	<b>Susan E. Wefald</b> President	<b>Kevin Cramer</b> Commissioner

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**ALLTEL Communications, Inc.**  
**2007 High-Cost Universal Service Support**  
**Annual Report**

**Case No. PU-07-595**

**ORDER GRANTING TRADE SECRET PROTECTION**

**March 12, 2008**

On August 2, 2007, ALLTEL Communications, Inc. (ALLTEL) filed an application to protect trade secret and confidential information in conjunction with its 2007 ETC Annual Report required by N.D. Admin. Code §§69-09-05-12(3) and 69-09-05-12.1. On August 29, 2007 Commission Staff (Staff) filed its response to the applications. On November 7, 2007 the Commission held an Informal Hearing. On December 20, 2007 Staff filed an amended response to the application.

ALLTEL seeks to protect the following Confidential Exhibits A, C and attachments 1 and 2, and D.

Confidential Exhibit A is a Narrative of ALLTEL's Service Improvement Plan for the State of North Dakota and an Excel Spreadsheet.

Confidential Exhibit C is a summary of 2006 Universal Service Support and Expenditures in North Dakota.

Confidential Exhibit C, attachment 1 is an Excel Spreadsheet of the 2006 Universal Service Support and Expenditures in North Dakota.

Confidential Exhibit C, attachment 2 is a Description of Improvements or Upgrades.

Confidential Exhibit D is the Outage Report for the State of North Dakota.

ALLTEL states that the information is in the nature of trade secrets and exempt from public disclosure under Chapter 69-02-09 of the North Dakota Administrative Code. ALLTEL states that it would cause economic hardship to ALLTEL if the information is disclosed to ALLTEL's competitors and would adversely affect the use of universal service funds.

ALLTEL states that the two-year service plan detail and corresponding attachments contain proprietary business and technical information that are entitled to protection as trade secrets because the information satisfies the requirements of the Administrative Rule.

ALLTEL states that the information derives independent economic value from its secrecy or a competitive advantage is derived from its secrecy. ALLTEL states that maintaining the information as secret is necessary for ALLTEL to maintain the competitive

advantage of its competitors not knowing ALLTEL's current network capabilities and/or network improvement work. ALLTEL states that without this information, its competitors would not have access to any perceived vulnerabilities in ALLTEL's network.

ALLTEL states that these reports are not readily ascertainable by proper means. ALLTEL states that the information is not available in any public sources, and cannot be legally obtained from ALLTEL without an adequate showing of a legal mandate or need for appropriate use in ALLTEL's business.

ALLTEL states that it maintains the information as secret by refusing to disclose the information outside the Company or to those employees who do not need to have access to the information. ALLTEL states that within the Company, those who have been trained to use the proprietary software that enables ALLTEL to compete the analysis are held to the highest ethical standards.

N.D.C.C. §47- 25.1-01 defines the term "trade secret" as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition of "trade secret" under N.D.C.C. §44-04-18.4, which is almost identical to N.D.C.C. §47-25.1-01, reads as follows:

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1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information. (Differences italicized).

N.D. Admin. Code §69-02-09-04 requires that the "commission staff examine the information and application and make a prima facie recommendation of whether the information is relevant and a trade secret under the definition of trade secret in North Dakota Century Code section 47-25.1-01."

Staff recommends that the information is relevant because, under N.D. Admin. Code §69-09-05-12.1(1) and 69-09-05-12.1(2) designated eligible telecommunications carriers must provide the information in Exhibits A, C and attachments 1 and 2, and D to the Commission in an annual report to show that the company is in compliance with its obligations as an eligible telecommunications carrier.

The information provided in Confidential Exhibits A, C and attachments 1 and 2, and D is considered confidential by the FCC under its rules. Under 47 C.F.R. § 0.457(d) trade secrets and commercial or financial information obtained from any person and privileged or confidential materials not routinely available for public inspection are treated a confidential by the FCC, and a request for protection is not required. In addition, a request for protection of confidential information may be submitted to the FCC under 47 C.F.R. §0.459. The FCC has acted to routinely grant protective orders pursuant to FCC Rules 0.457 and 0.459 in order to accord confidential treatment to financial information about cell site expenditures and operating expenses set forth in wireless ETCs' build-out plans filed with the FCC. See *Petition of Singular Wireless, LLC for designation as an Eligible Telecommunications Carrier in the State of Georgia, Protective Order*, CC Docket 96-45, DA 07-3627 (rel. August 15, 2007) ("*Cingular Order*"); *NEP Cellcorp, Inc. Application for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Protective Order*, CC Docket 96-45, DA 07-3628 (rel. August 15, 2007) ("*NEP Order*"); *Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Protective Order*, CC Docket 96-45, DA 07-3629 (rel. August 15, 2007) ("*Corr Order*"). In the *Cingular* docket, the confidential information related to the projected uses of universal support set forth in the company's 5-year service improvement plan, including capital expenditures, operating expenses and proposed new cell sites. See *Cingular Order*, ¶ 2.

The information provided in the outage report is considered confidential by the FCC for national security reasons and should be granted trade secret protection under N.D. Admin. Code §69-02-09-01. The information required in the Commission's ETC Outage Report is similar to the information which the FCC requires wireless carriers to file in Part 4 Outage Reports as contained in 47 C.F.R. §4.1 et seq., especially §4.9. The FCC has determined that the information required in Part 4 Outage Reports is highly sensitive and protected from public dissemination under the Freedom from Information Act. The FCC states:

The overwhelming majority of the commenting parties, including the Department of Homeland Security ("DHS"), have demonstrated that the outage reports will contain sensitive data, which requires confidential treatment under the Freedom of Information Act ("FOIA"). This data, though useful for the analysis of past and current outages in order to increase the reliability and security of telecommunications networks in the future, could be used by hostile parties to attack those networks, which are part of our Nation's critical information infrastructure. The disclosure of outage reporting information to the public could present an unacceptable risk of more effective terrorist activity. We therefore will treat the information that will be provided as confidential. This information will be withheld from disclosure to the public in accordance with the Freedom of Information Act.<sup>1</sup>

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<sup>1</sup> *In the matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-188, 19 FCC Rcd. 16830 (rel. Aug. 19, 2004), ¶ 3 ("*Outage Order*").

Staff recommends that the information in Confidential Exhibits A, C and attachments 1 and 2, and D is trade secret information that should be protected. The information provided in Confidential Exhibits A, C and attachments 1 and 2 is considered confidential by the FCC under 47 C.F.R. §§ 0.457 and 0.459. The FCC also considers information in outage reports to be highly sensitive and protects the information from public dissemination in the Freedom from Information Act. N.D.C.C. §44-04-18(1), as interpreted by the North Dakota Attorney General, allows a state agency to provide confidentiality protection of information if the information is specifically protected under federal regulation. The information in Confidential Exhibits A, C and attachments 1 and 2, and D is protected under federal regulation.

The Commission agrees that ALLTEL's application requesting trade secret protection for Confidential Exhibits A, C and attachments 1 and 2, and D should be granted.

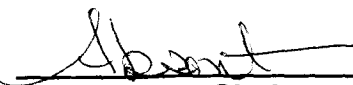
The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.


### Order


The Commission Orders:

1. ALLTEL Communications, Inc.'s application for trade secret protection is GRANTED.
2. This Order does not constitute precedent for subsequent trade secret decisions by the Commission.

### PUBLIC SERVICE COMMISSION

  
Tony Clark  
Commissioner

  
Susan E. Wefald  
President

  
Kevin Cramer  
Commissioner